

Protest Procedures

The protest procedures in 43 CFR 1610.5-2 provide the public an administrative review of the State Director's proposed land use plan decisions. The BLM Director determines through this process whether the State Director followed established procedure, considered relevant information in reaching proposed decisions, and proposed decisions that are consistent with BLM policy.

The Director has delegated signing of response letters to protests to the Assistant Director, Renewable Resources and Planning (AD-200). Acting in support of the Director, the Group Manager for Planning, Assessment, and Community Support (WO-210) is responsible for the oversight of the entire process once a protest is filed through final resolution. Each protest is considered in close coordination with the involved State Director and affected WO groups, other WO policy officials, and as appropriate, the Office of the Solicitor. The WO-210 Group Manager makes recommendations to the Assistant Director for final resolution of the protest following the procedures established in this IM.

It will be the BLM's goal to resolve all protests within 90 days. If it is not possible to resolve and respond to the protest(s) within 90 days, the Group Manager, WO-210 should send a letter acknowledging receipt of the protest to the originating party, indicating that a more detailed response will follow.

Washington Office Initial Evaluation of Protests

When possible, all actions in this section will be completed within 5 business days of receipt of the protest letters:

1. The Protest Coordinator will establish a case file for each protest received. Each protest will be consecutively serialized using the following coding: PP-SO-PN-FY-#
 - "PP" means Plan Protest,
 - "SO" means the responsible State Office,
 - "PN" means a plan name identifier of up to several letters,
 - "FY" means the last two digits of the fiscal year,
 - "#" is a sequential number assigned as the filings are received.
2. The Protest Coordinator will check to ensure that each protest was filed within the protest period (see 43 CFR 1610.5-2(a)(1)). Plan protests are deemed timely if the postmark is not later than the last day of the protest period. Normally, BLM does not need to actually receive a protest by the end of the protest period – the protest must only be postmarked by that date. In certain instances, the BLM may require that protests be received by the end of the protest period. This requirement may only occur if the public is widely and officially notified (at a minimum, in the Federal Register Notice and Dear Reader letter). In all cases, the protest period shall be 30 days and always end on a business day. If the 30th day falls on a Saturday or Sunday, the protest period shall end the following Monday. The protest period may not be extended for any reason. Due to security

screening delays, some protests may arrive in Washington, DC three weeks after the protest period ends, or later.

The following strict standards will determine timeliness:

- If the originator filed a protest after the protest period, the WO will dismiss it and respond to the originator in writing.
- If the originator filed a protest timely, proceed to the next steps.

The publication of the Environmental Protection Agency's (EPA) Federal Register Notice of Availability starts the protest period for EIS-level plans and amendments. The initiation of the protest period for EA-level plan amendments is the actual mailing date of the amendment.

3. The Protest Coordinator will examine each protest to see if it is complete (see 43 CFR 1610.5-2(a)(2)(i)-(v)). The term "complete" means that the following five protest components are submitted in the protest filing:
 - (i) The name, mailing address, telephone number, and interest of the person filing the protest,
 - (ii) A statement of the issue or issues being protested,
 - (iii) A statement of the part or parts of the plan or amendment being protested,
 - (iv) A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record, and
 - (v) A concise statement explaining why the State Director's decision is believed to be wrong.

The BLM will not dismiss a protest solely if the protest omits some or all of the documentation required by item (iv) above. If BLM is uncertain about standing and the missing materials are necessary for BLM to make this determination, BLM shall request, in writing, the protesting party to provide the missing materials to the protest coordinator. Requested materials must be postmarked no later than 10 days after BLM's request for these materials is received by the protesting party (return receipt verified). Case-by-case consideration will be given to appropriate actions for incomplete submissions. Minor omissions will not be used as a reason to dismiss a protest. If the protest does not meet the five protest components and if standing cannot be determined by this additional step, the protesting party will be denied standing.

4. The Protest Coordinator will forward a copy of protest letters meeting the above five components to the responsible State and Field Office(s) for further evaluation and a detailed analysis. Protests that meet the requirements noted above will be forwarded to the affected State as soon as practicable rather than waiting until the end of the protest period. WO liaisons should also ensure that copies of the protests are distributed to all affected WO program staffs.

State Office Evaluation and Determination

1. The State Director and Field Office(s) will assess the following criteria to determine the validity of the protest findings as documented on the “State Director’s Protest Analysis Form” (Attachment 2):
 - A. *Does the protesting party have standing?* The protesting party must have participated in the planning process by:
 - a. Sending in written comments;
 - b. Making oral comments;
 - c. Attending a public meeting;
 - d. Calling the BLM field office; and/or
 - e. Discussing the project with BLM employees in the field.

Project files must include appropriate documentation of the protesting party’s participation in order for BLM to substantiate the protesting party’s standing. The responsible Field Office Manager will review the planning records to make this determination. If the determination is made that no participation has occurred, no further review of the protest is required. The AD-200 will issue a written decision that dismisses the protest for lack of standing. Even though the protest is dismissed, the AD may address any comments that were raised.

Individual members of an organization do not automatically obtain standing solely because their organization has participated in the planning process. To file a protest as an individual, the individual has to meet the requirements for standing. Conversely, an organization does not obtain standing because one of their members has standing. Each protesting party must meet all requirements for filing a complete protest in accordance with the regulations. Merely attaching or referencing another protesting party’s protest is not sufficient to qualify as a valid protest.

B. Have the issues been raised before in the planning process? Issues raised on protest must have been previously raised for the record in the planning process. The issue does not have to have been raised specifically by the protesting party. If some of the issues were previously raised, the State Director’s analysis will indicate which issues were raised previously and which are newly introduced. If the responsible State/Field Office determines that none of the issues have been raised before, the issue will not be treated as a valid protest issue but as a comment. If the responsible State/Field Office determines that one or more issues have not been raised before, those issues will be treated as comments.

C. Are the issues raised germane to the planning process? An issue is not germane to the planning process if it is beyond the scope of a particular planning effort, or if it involves a matter normally addressed in plan implementation. Protest issues that are not germane to the planning process will not be considered as an issue of protest but treated as comments.

If the answers to the italicized questions above are all “yes,” the State Director should continue the analysis starting with Step 2 below. If the answers to one or more of the questions is “no,” the State Director should complete a draft response in accordance with Attachment 3 and forward the document to the appropriate WO-210 state liaison who will complete a response that dismisses the protest.

1. A detailed analysis will be prepared for each issue or comment raised (see Attachment 2, Items 5-7) in a valid protest letter. The following factors must be addressed in the State Director’s Analysis:
 - The facts considered;
 - Procedures followed;
 - Authorities cited;
 - References from applicable documents;
 - Applicable BLM policies.

When citing published data from the planning record, the document, date of publication, and page number(s) must be part of the analysis used in the response to the protest issue. When citing material from unpublished BLM records, sufficient information must be included to show that the material existed and was relevant during the planning process.

2. The State Director will document the detailed analysis of each protest using the format in Attachment 2. The preparation of preliminary draft responses, using boilerplate language in Attachment 3, Item 4, will expedite the protest resolution process. Other pertinent information that would help resolve the protest should also be included. Completed packages will be sent to the Group Manager, WO-210, no later than 60 days after the protest is received in the State Office.
3. The State Director, in consultation with the WO, may determine that discussion and negotiation with protesting parties are appropriate if these discussions may lead to resolution of one or more issues. When these discussions result in resolution of protest issues, advise the protesting party to give the Director a written notice withdrawing the protest. The protesting party may decline to withdraw the protest, but may be willing to accept a clarification or minor change to the proposed decision that effectively resolves the contested issues. This type of change must not trigger a “notice of significant change” required by 43 CFR 1610.5-1(b). For large numbers of protests or complex protests, the WO may send a team to work with the State Office and Field Office in analyzing issues and preparing draft responses.

Washington Office Final Review

1. WO-210 state liaisons, in coordination with the respective State/Field Office, will evaluate each protest for content. 43 CFR 1610.5-2(a)(v) requires that protests include a “concise statement explaining why the State Director’s decision is believed to be wrong.” Statements that reflect disagreement, express opinions, or make

demands or allegations without the support of this concise statement will be considered comments and will not be treated as valid protest issues. Opinions, allegations, and issues raised in dismissed protests may instead be addressed as comments (see boilerplate language in Attachment 3).

2. The Group Manager, WO-210 will prepare a draft response and decision on each protest (see Attachment 3, item 4). Decisions should have standard organization and phraseology. The decision will:
 - Incorporate the results of the WO and SO evaluations,
 - Incorporate the SO and WO-210 analyses of the protest points, and
 - Provide a clear statement of the action taken on the protest (dismissed, denied, returned to the State Director for further consideration, or upheld in total or in part).

The bases for upholding protests include (H-1601-1, Appendix F, page 3):

- Approval of the proposed plan or amendment would be contrary to the Director's policy guidance;
- Significant aspects of the proposed plan or amendment are based upon invalid or incomplete information; or
- The proposed plan or amendment does not comply with applicable laws, regulations, policies and planning procedures

Protests upheld on any of the three bases above will be returned, in whole or in part, to the State Director for:

- Clarification;
- Further planning or consideration; or,
- Change, in whole or in part, of the proposed management decisions (H-1601-1, Appendix F, page 3).

3. As the protest responses are drafted, WO-210 will coordinate with other Washington Office program staffs. Program offices are consulted when a protest involves one or more of the following:
 - Precedent-setting departures from the existing resource management practices;
 - Failure to comply with national policy guidance and legal requirements;
 - A major change in the use of resources in the area covered by the plan; and/or
 - Subject areas or matters where special expertise is required.
4. The WO-210 state liaison will forward the draft proposed response for surnaming to the appropriate Assistant Directors. See Attachment 3 for details of the surnaming process.
5. When the revised draft response is surnamed, the WO-210 state liaison and the Protest Coordinator will finalize each protest response and prepare a letter for signature by the Assistant Director (AD), WO-200.

6. Once the AD has signed the protest response, the Protest Coordinator will send it to the protesting party by certified mail, return receipt requested. A copy will also be sent to the appropriate State Director and Field Manager(s). The State Director may sign the land use plan decision document only after all protest response letters have been signed and mailed, and any other requirements for approval have been met.
7. Portions of the proposed plan not under protest or remanded for reconsideration may be approved and implemented. In such cases, the State Office should consult with the WO for further direction.
8. If the proposed decision and its supporting analysis are returned in whole or in part to the State Director, WO-210 will negotiate the necessary follow-up with the affected State and Field Office.